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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-436

James L. Buckley, Et Al,
Appellant

v.

Francis R. Valeo, Et Al,
Appellee

On Appeal from the United States Court of Appeals for the District of Columbia Circuit and from the United States District Court, District of Columbia

BRIEF AMICUS CURIAE FOR JAMES B. LONGLEY

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INTRODUCTION

James B. Longley, a resident of the State of Maine, presents this brief in support of the Plaintiffs-Appellants with the consent of counsel for all parties.

INTEREST OF AMICUS

James B. Longley is Governor of the State of Maine. He was elected in November, 1974 in spite of the fact that he was not

affiliated with a political party. He did not campaign as a Democrat or as a Republican but rather as a candidate independent of both political parties. In the 1974 general election, he was the only candidate in the nation elected to a major office without political party affiliation. Governor Longley's successful election was in part attributable to the concern of thousands of Maine citizens with the integrity of the two party system in the United States. He shares the view of those Americans who believe that the integrity of the electoral process can best be served by subjecting election campaigns to the rule of law. He does not share the view of those who believe the rule of law should be used to deny citizens the right of political expression except through affiliation with the Democrat or Republican parties. Certain portions of the Federal Election Campaign Act of 1971 as amended by the Federal Election Campaign Act Amendments of 1974 (hereinafter cited as FECA) require such political affiliation as a practical condition to effective political expression. Accordingly Governor Longley joins the Plaintiffs-Appellants in urging reversal of the decision of the United States Court of Appeals for the District of Columbia Circuit.

ARGUMENT

FECA represents a successful bi-partisan attempt to preserve the present two party system by placing obstacles in the paths of candidates of other parties and independents. The legislative history is replete with examples of bias in favor of the Republican or Democrat parties. Senator Pastore argued in connection with the check-off system "What we are trying to do is give both sides the same amount of money ...." Cong. Rec. §18891 (daily ed. Nov. 17, 1971). In the public financing section of FECA, non-major party candidates and independents do not receive full funding. If one assumes a certain amount of altruism on the part of Congress, a difficult assumption in view of the legislative record pertaining to FECA, one must further assume that the failure to place non-major party candidates and independents on an equal footing with major party candidates was

prompted by the supposed unlikelihood of their election. The successful Longley candidacy in Maine contradicts this premise. It is naive to consider his victory as a political aberration. Third party efforts have admittedly made a recognizable impact on national elections in the past decade, and the Longley victory proved that a third party candidate or independent could in fact be elected to a major office if such a candidate could attain political viability. Certain of the FECA provisions make it impossible for such a candidate to achieve such viability.

I. THE DISCLOSURE REQUIREMENTS OF §434 ARE UNCONSTITUTIONAL WHEN APPLIED TO NON-MAJOR PARTY OR INDEPENDENT CANDIDATES.

In part, a non-major party or independent candidate must depend upon obtaining financial support from contributors who demand anonymity. This is not a concern of the major parties. In most instances, their contributors have previously acknowledged their political views by registering with a particular party. Such contributors are not concerned with the privacy of their political beliefs. Their act of political registration is public testimony of that fact. The disclosure of financial support for a particular party candidate is a logical and innocuous extension of their political affiliation. Such is not the case with those who might be inclined to contribute to the candidacy of a person outside the two party system. Such a potential contributor must consider the effect of acting on his convictions by publicly acknowledging his support for a candidate who is not a member of the Democrat or Republican parties. Depending upon the extent of his prior political involvement with the major parties, such a potential contributor must pay a price to exercise his First Amendment freedoms. This price could range from mere neighborly concern as to his reasons for supporting a third party or independent candidate to loss of employment or worse as a means of retribution. Whatever the price, it must be paid by the potential contributor who decides to exercise his First Amendment freedoms outside the established two party system. It is a price that is not exacted from potential contributors to the major party candi-

dates. It is a price that necessarily poses a reasonable danger of chilling the exercise of First Amendment rights.

Chief Justice Warren wrote in Sweezy v. New Hampshire, 354, U.S. 234, 251 (1957) "History has amply proved the virtue of political activity by minority, dissident groups who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted." The opinion of the Court of Appeals recognizes the historical wisdom of Chief Justice Warren's observations. Yet the decision permits a law to stand that necessarily poses a threat to the political viability of any third party or independent candidate. It does so on a "technicality". It does so because the record does not contain substantial evidence of possible chill and harrassment. First Amendment freedoms are too dear to be eroded by legal "technicalities". The Court should apply its most exacting review in this instance and find the disclosure requirements of §434 unconstitutional.

II. THE CONTRIBUTION LIMITATIONS OF §608(b) ARE UNCONSTITUTIONAL WHEN APPLIED TO NON-MAJOR PARTY OR INDEPENDENT CANDIDATES.

Common sense requires one to conclude that the power of wealth "unduly influenced politics, an influence not stopping short of corruption ...." United States v. UAW, 352 U.S. 567, 570 (1957). Congress correctly responded to the excesses of the 1972 election by proposing legislation designed to curb obvious abuses of our electoral process. Congress incorrectly responded to those excesses by enacting legislation that makes non-major party participation in the electoral process a practical impossibility.

FECA is premised on the erroneous assumption that a non-major party or independent candidate cannot be elected to a major national office. The election of James B. Longley as Governor of Maine should serve to dispel that illusion. Given the same financial assistance available to the major party Presi-

dential candidates in any given year, it is probable that a Longley could have obtained a substantial number of votes and possibly have been elected President. Had such a hypothetical election occurred at an appropriate time subsequent to the disclosure of the revelations concerning the last Presidential campaign, the election of a Longley would have been more than possible - - it would have been probable.

If FECA becomes law, the erroneous assumption that a non-major party or independent candidate cannot be elected to a major national office will no longer be an erroneous assumption. The Democrat and Republican parties will have successfully legislated any third party or independent competition out of existence. They will have done so by subjecting their potential competitors to their bi-partisan contribution limitations and, at the same time, excluding those same potential competitors from sharing equally in the public financing section of the legislation. The non-major party and independent candidates should not be treated as the equals of major party candidates in one section of the legislation and less than equals in other sections. If the non-major and independent candidates are to be subjected to the disadvantages of FECA, at the very least they should be allowed to benefit equally with the major party candidates as far as the advantages of FECA are concerned.

III. THE PUBLIC FINANCING PROVISIONS OF FECA DISCRIMINATE AGAINST NON-MAJOR PARTY OR INDEPENDENT CANDIDATES.

An independent candidate who does not participate in primaries or receive the nomination of a party at a convention is obviously ineligible for primary and convention funding. In order for a Longley, for example, to achieve the necessary political viability, national exposure would be a necessity. A primary campaign or convention enables a candidate to obtain such exposure. The independent candidate is then denied the benefits of a primary campaign or a convention unless the candidate chooses to follow the typical major party route to election. Much of Governor Longley's appeal to the voters of

Maine was based upon his refusal to follow this path in Maine. He maintained that the major parties had lost touch with the needs of the people. The people of Maine obviously agreed with him. Had he run nationally in November of 1974, it is probably safe to assume that a great many people in other states would likewise have agreed with him.

Other provisions concerning public funding are likewise weighted in favor of the established parties. The treatment of a non-major party candidate is discriminatory. However, such a candidate benefits generously compared to the independent who desires to run for national office without the political strictures of a party. For example, not only is the independent denied primary and convention funding, if he wins he is not allowed to receive post election funding unless he has created a party. The Court of Appeals seems to recognize this uneven treatment but fails to find it fatal because the appropriate provisions of FECA are not invidiously discriminatory. At the same time, the Court recognizes the necessity for all concerned to maintain a careful scrutiny as the provisions are implemented. The Court seems to be suggesting that the admittedly discriminatory features of FECA will be judicially tested at such time as a real rather than a speculative controversy exists. Such an occasion will probably never occur because the discriminatory features of FECA will never enable a non-major party or independent candidate to succeed to the point where he can present a real controversy for judicial scrutiny.

The Supreme Court has never hesitated to strike down any scheme that places unreasonable obstacles in the way of candidates or parties seeking access to the ballot. Williams v. Rhodes, 383 U.S. 23, 31 (1968). The failure to afford non-major party or independent candidates equal access to public funds places an unreasonable obstacle in such a candidate's path to national office.

Many Americans are disenchanted with the present two party system and desire change. Many Americans desire political leadership independent of a party system they distrust.

They desire to vote for an individual and not a party. The Public Financing Provisions of FECA perpetuate the two party system at a time when many Americans are seeking an alternative. Through FECA the two major parties have successfully constructed legal fortifications around their endangered positions. They have used the public demand for reform of the electoral process to frustrate the ever increasing independent and third party movement in the United States. Each major party sacrificed equally. In return each major party was guaranteed that its members could seek elective office within the traditional political framework. Each party willingly accepted the inconvenience of FECA in return for the convenience of seeking elective office without the third party or independent threat.

IV. ABSENT REVERSAL OF THE COURT OF APPEALS' DECISION, RESTRICTIVE STATE LEGISLATION AGAINST NON-MAJOR PARTIES OR INDEPENDENT CANDIDATES IS PROBABLE.

21 Maine Revised Statutes Annotated §§491 - 494 pertain to the procedure for nominating a candidate for any State or County office independent of a political party. The Legislature of Maine amended several sections of Title 21 after the election of an independent candidate as Governor. Previously an independent candidate for Governor could gain access to the ballot by obtaining voters' signatures equal to one percent (1%) of the number of votes cast for Governor at the last gubernatorial election. One of the amendments increased the number of signatures required to three percent (3%). Previously the required signatures had to be filed with the Secretary of State before August 15th of the election year. One of the amendments altered this section of Title 21 by requiring such signatures to be filed on the date of the primary election. Title 21 Maine Revised Statutes Annotated §448 designates the second Tuesday of June of each general election year as the date of the primary election. Finally the Legislature enacted an amendment requiring an independent candidate to file a

declaration of candidacy with the Secretary of State by April 1st of the election year in which he or she will be a candidate.

These changes in procedure obviously make a potential independent candidate's task more difficult in Maine. It is equally obvious that these changes resulted because of the Longley victory. Unless the decision of the Court of Appeals is reversed, it is certain that other state legislatures will attempt to perpetuate the two party system by placing discriminatory obstacles in the way of non-major party or independent candidates. FECA will, in all likelihood, be utilized as a blueprint for ostensible election reform by state legislatures throughout the country. The Act and its progeny thus will effectively sound the death knell for non-major party and independent political activities in the United States.

CONCLUSION

Amicus urges that the judgment of the Court of Appeals be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served three copies of this Brief of James B. Longley as Amicus Curiae upon counsel of record for each of the parties by depositing copies of said Brief in the United States Mail, properly addressed and with sufficient postage thereon to insure delivery by air mail.

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